

No 167. which a decret of certification was fairly extracted, albeit payment of the pursuer's expenses was offered.

Forbes, p. 442.

SECT: IX.

Abiding by.

No 168. 1616. *February 6.* LORD HERRIES *against* ANDREW KER.

IN an improbation pursued by the Lord Herries against Andrew Ker, the LORDS fand, that albeit the direct manner was extant, and that the improver did not use the indirect improbation, yet it was lawful to the party user to propone articles of approbation, specially seeing there was but one witness existing.

Kerse, MS. fol. 206.

No 169. 1618. *June 16.* A. *against* B.

THE LORDS fand, that after a day taken for production in improbations, the party could not pass from his compearance.

Kerse, MS. fol. 206.

No 170. 1625. *June 21.* L. MURDESTON *against* BAILLIE.

A bond was taken to be improved, and the clerk register produced the principal. The defender did not abide by, remaining absent. Without further proof of falsehood, the bond was declared to make no faith.

AN improbation being pursued by the L. of Murdeston against Mr James Baillie, for improving of an obligation, wherein the Clerk of Register and his deputes being convened for production of the principal bond, the same being registrate in the books of council, and the bond being produced by the clerk, and the party defender being called, and not compearing, but being absent, the said bond upon the second summons of continuation, without further proceeding in the cause, was decerned to make no faith, and instantly was then cancelled in judgment before the Lords at their command; the reason was, because the party was twice summoned to hear and see the same produced and improven, and albeit it was produced by the clerk, yet seeing the party summoned as said is, compeared not to abide by the bond, but was absent, there-

fore the LORDS decerned the same to make no faith, and caused cancel the same, and found no necessity that the pursuer should be urged to proceed any further to the trial of the falsehood thereof, nor that it was necessary to summon the defender to compear and declare, and give his oath if he had just cause to use the said bond, and that he would abide at the same as a true evident; but found, that his absence, and his not compearing after his citation by the principal summons of improbation, and in the continuation by the second summons, was sufficient to infer the foresaid sentence.

No 170.

Act. *Stuart.*Alt. *Absent.*Clerk, *Hay.*• *Fol. Dic. v. I. p. 457. Durie, p. 164.*1628. *June 27.*LESLEY *against* LESLEY.

No 171.

FOUND betwixt George Lesly and Janet Lesly, that we behoved to pass frae improbation of the rest of the writs produced, and that it should be lawful to the said Janet to take the same up, because we had taken a day to improve two contracts produced; and the LORDS would not let the writs passed frae be in process, albeit we took instruments upon the production thereof, and declared that we would use the same in the indirect manner of improbation.

*Kerse, MS. fol. 208.*1629. *December 4.*WINRAM *against* ANDERSON.

No 172.

JOHN WINRAM, cautioner in the contract of marriage betwixt umquhile Mr Robert Winram and Grizel Anderson, relict of umquhile Mr William Coupar, Bishop of Galloway, pursues the said Grizel for improbation of the said contract. The defender declares that she will abide to the verity of the subscription of the said contract before no witnesses, and that she and the cautioner subscribed the same before the witnesses inserted in the contract. It was contended by the pursuer, that her declaration in this kind would not be reserved, because it prejudged the pursuer of his direct form of improbation.—THE LORDS found that she might declare how she would abide the verity of the contract.

Auchinleck, MS. p. 96.

Found competent to abide by a deed under this qualification, that although not signed of the date, and before the witnesses, it was truly subscribed.

* * Durie reports the same case :

ONE Winram pursues the relict of Mr Robert Winram for improving of their contract of marriage.—THE LORDS found, That albeit the contract was subscribed by the husband, and a cautioner for him, and bore only one date, and before the same witnesses; yet that the relict, who was pursued for improbation